

#### **REMARKS**

Claims 1-20 were pending in the above-identified application prior to entry of this Amendment. Claims 5-14, have been previously withdrawn as drawn to non-elected subject matter and for this purpose these claims are currently withdrawn pending examination of the elected species. Accordingly, after entry of this Amendment, claims 1-20 are pending in this case, claims 1-4 and 15-20 to be examined initially. Claims 1, 5, 8, 15, 17, and 20 have also been amended as described further below. The changes to the claims do not constitute the addition of new matter and full support for the changes may be found in the specification and claims as originally filed and as further delineated below.

In claims 1, 5, 8, 15, 17, and 20 the definition of  $R^2$  has been amended to add the terms “(C<sub>3</sub>-C<sub>9</sub>)cycloalkyl(C<sub>1</sub>-C<sub>8</sub>)alkyl,” “(C<sub>3</sub>-C<sub>9</sub>)aryl(C<sub>1</sub>-C<sub>8</sub>)alkyl,” “(C<sub>3</sub>-C<sub>9</sub>)heteroaryl(C<sub>1</sub>-C<sub>8</sub>)alkyl,” and “(C<sub>3</sub>-C<sub>9</sub>)heterocyclyl(C<sub>1</sub>-C<sub>8</sub>)alkyl” to the definition. Support for these substituents is found in the examples. (See, for example, (C<sub>3</sub>-C<sub>9</sub>)cycloalkyl(C<sub>1</sub>-C<sub>8</sub>)alkyl (Table 1, Examples 60 and 79), (C<sub>3</sub>-C<sub>9</sub>)aryl(C<sub>1</sub>-C<sub>8</sub>)alkyl (Table 1, Examples 43, 48, 55 and 57), (C<sub>3</sub>-C<sub>9</sub>)heteroaryl(C<sub>1</sub>-C<sub>8</sub>)alkyl (Table 1, Examples 46, 50 and 64), and (C<sub>3</sub>-C<sub>9</sub>)heterocyclyl(C<sub>1</sub>-C<sub>8</sub>)alkyl (Table 1, Examples 51 and 62) to name only a few.) No new matter has been added.

#### **Rejection Under 35 U.S.C. §112, Second Paragraph**

The Examiner has rejected claims 1-4, 15-18 and 20 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The phrase “substituted or unsubstituted” as alternative definitions of  $R^2$  is said to render the scope of claims 1, 5, 8, 15, 17 and 20 indefinite. In order to advance the prosecution of the case and without acquiescing to the correctness of this rejection, Applicants have amended the definition of “substituted” in the specification at page 6, lines 12-24 to be more definite by removing the phrases “ether”, “ester”, “but not limited to” and “and the like”, from the definition as suggested by the Examiner. Therefore, the term “unsubstituted” is clearly defined also. Applicants have also amended claims 1, 5, 8, 15, 17 and 20, as suggested by the Examiner, to specifically incorporate the definition of substituted. No new matter has been

added. Applicants respectfully submit that the amended definition particularly points out and distinctly claims the subject matter of the invention.

The terms "ether" and "ester" in the definition of substituted was also objected to. These terms were deleted from the definition of "substituted" and replaced with the term "--O-(C<sub>1</sub>-C<sub>6</sub>)alkyl". Such substituents are disclosed in, for example, Table 1, Examples 66 and 149 in the original application as filed. No new matter was added.

In addition, Claims 1 and 20 has been rejected as indefinite because the term "alcohol" is recited in the definition of R<sup>2</sup> as a substituent. The Examiner objects to this term as being a compound and not a substituting moiety on the molecule. Applicants have amended every instance of this term to read "hydroxyalkyl". This is an obvious typographical error as noted by the examiner. Further support for the term "hydroxyalkyl" is found in the examples for many of the disclosed compounds (See, for example, Table 1, Examples 58, 59, 61, 72, 77, 78, 80, to name a few) and, in addition, the term "(C<sub>1</sub>-C<sub>6</sub>)alcohol" is found at page 1, line 21; page 2, lines 10, 24 and 25; and page 3, line 1. No new matter has been added by this amendment.

Claim 20 has been rejected as indefinite because the exclusionary proviso lacks antecedent basis in the claim. This exclusionary proviso has been deleted from claim 20.

In view of these amendments and remarks, withdrawal of the rejections under 35 U.S.C. §112, second paragraph, is respectfully requested.

The above discussion and corresponding amendments are based on section 112 issues and are not made to overcome art-based rejections. Accordingly, such discussion and corresponding amendments should not be construed in a limiting manner.

#### **Rejection Under 35 U.S.C. §102(a) and §102(e)**

The Examiner has rejected claims 1-4 and 20 under 35 U.S.C. §102(a) and §102(e) as allegedly anticipated by WO 03/004475 (Berg et al.).

Applicants respectfully traverse this rejection and request reconsideration. Applicants claims require that (C<sub>3</sub>-C<sub>9</sub>)heteroaryl group be attached to or incorporate the nitrogen attached to the carbonyl group of the molecule. The compounds cited by the Examiner in WO 03/004475 do

not have a heteroaryl group attached to a nitrogen or incorporating a nitrogen attached to the carbonyl group.

In view of these amendments and remarks, withdrawal of the rejections under 35 U.S.C. §102(a) and §102(e) over WO 03/004475 is respectfully requested.

It is respectfully submitted that the claims have been put in condition for allowance. Notification to this affect is earnestly solicited. The Examiner is encouraged to contact the Applicant's undersigned attorney to discuss this matter if any questions should arise upon further examination of the pending claims.

Respectfully submitted,

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